

FCC MAIL SECTION

DEC 2 2 07 PM '99

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

FCC 99M-78  
 90811

DISPATCHED BY

In re Applications of

)

MM DOCKET NO. 99-153

)

READING BROADCASTING, INC.

)

File No. BRCT-940407KF

)

For Renewal of License of

)

Station WTVE(TV), Channel 51

)

Reading, Pennsylvania

)

)

and

)

)

ADAMS COMMUNICATIONS CORPORATION

)

File No. BPCT-940630KG

)

For Construction Permit for a New

)

Television Station to Operate on

)

Channel 51, Reading, Pennsylvania

)

**ORDER**

Issued: November 22, 1999 ; Released: November 24, 1999

This is a ruling on Contingent Motion To Compel that was filed by Adams Communications Corporation on November 12, 1999.<sup>1</sup> An Opposition To Contingent Motion To Compel was filed by Reading Broadcasting, Inc. on November 19, 1999.

This discovery contest is in relation to the documentary discovery authorized in Memorandum Opinion and Order FCC 99M-65, released October 26, 1999 (referred to as "FCC 99M-65").

**Shareholders Minutes**

Minutes of all shareholder meetings within the renewal period and categories of minutes of directors' meetings were to be produced under FCC 99M-65. Adams asks for additional shareholders' minutes and Reading represents that all shareholders' minutes were delivered as required under FCC 99M-65 (except for a legible copy of minutes of meeting on October 31, 1991 that was being transmitted by Reading).

---

<sup>1</sup> The full title of Adams' pleading is "Adams' Statement Re Discovery Under The Comparative Issue And Contingent Motion to Compel." An "annotated" version of the Motion was submitted on November 15, 1999.

Adams contends that there are missing minutes but does not identify them. Evidently, there were apparent (but not definitive) gaps in late 1992, 1993, and early 1994 for which time periods there logically should have been minutes. Evidently, Mr. Linton thought that there were meetings during these times for which there should be minutes (page references of the Linton deposition provided in annotated filing of November 15).

Reading must make full production of documents which were ordered to be produced. If there are missing minutes, such minutes must be identified by date. The fact that they are missing must be disclosed and there must be an accounting for the steps being taken to retrieve any which are lost or mislaid. In addition, Reading must respond specifically to ancillary but related discovery sought by Adams in Mr. Linton's deposition at Tr. 608; 30-31; 52-55; and 81.

### **Documents Referenced in Minutes**

Adams also seeks documents that are referred to in minutes of shareholders but that were not produced in response to FCC 99M-65. Reading argues that it produced the minutes for inspection as they were assembled and maintained by Reading. In some cases there were documents that were referred to but not included with the minutes. Reading denies any obligation to retrieve documents that were not actually in the minutes even if referred to in the minutes. Reading also suggests that some of the referred to documents are subject to an attorney-client-privilege (e.g. Tr. 81) and argues that several are not responsive to issues, such as documents relating to a requested issue on unauthorized transfer of control.

If documents are referenced in minutes that were ordered to be produced, those documents must be produced if they are in the possession or under the control of Reading or its agents.<sup>2</sup> Documents claimed privileged will be identified and justified as privileged in accordance with Commission practice.

### **Articles of Incorporation**

Reading will make available next week the articles of incorporation that were effective at the end of the renewal period (August 1, 1994). This discovery is not deemed to be contested unless counsel advise otherwise.

---

<sup>2</sup> A similar ruling on entitlement to completeness was made at Reading's request in favor of Reading during a deposition of a principal of Adams on the legal fee arrangement of Adams and its counsel while an abuse of process issue is being considered. To the extent it is possible, the parties should have equal discovery.

### **Settlement Agreement**

Adams sought a copy of an agreement which settled a dispute between Reading, Mr. Parker and Dr. Aurandt. The agreement was referred to in Reading minutes and was to be disclosed to Adams under FCC 99M-65. Reading represents that the agreement was submitted as an attachment to Reading's pleading responding to Adams' third motion to enlarge. Without more definitive information, Reading appears to be in compliance with the request for the agreement.

### **Financial Statement**

Adams seeks to discover a Reading financial statement for the year ending December 31, 1993. Reading seems to respond that there is no such financial statement in existence and that none was ever prepared. If there is none, Reading will not be ordered to prepare one unless its financial condition for that period is placed in issue by Reading or unless Adams makes a definitive showing that such financial information is decisionally significant.

### **Stock Transfer Records**

Adams seeks disclosure of Reading's complete stock transfer records. Apparently, during the November 8, 1999, deposition of Mr. Jack A. Linton, a former corporate Secretary of Reading, there was testimony that more than one stock transfer record may exist at Reading. Reading argues that stock records are not discoverable under §1.325(c). Under §1.325 (c)(xii) standards, Adams could obtain documents that identify or describe the Adams' principals. Stock records or stock ledgers would meet that purpose and are not privileged documents.

The stock transfer records sought by Adams must be provided, particularly if there are conflicting records or two sets of Reading's stock transfer records. At a minimum, since there is a fact issue of local residence of Reading's ownership, Adams is entitled to accuracy of information on ownership. Stock ownership of a non-public company should be readily ascertainable and would provide information that is relevant to the fundamental determination of true and accurate ownership of a party that has filed an application that is being compared with another applicant.

### Conclusion

Discovery will be completed and/or accounted for under the above rulings by **December 2, 1999**, or another Status Report must be submitted on that date by both parties. In the interim, there will be discussion of the status of discovery at the Prehearing Conference that is set for November 23, 1999.<sup>3</sup> The parties are encouraged to cooperate fully and negotiate all outstanding discovery requests to all extents possible.

SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Richard L. Sippel", written in a cursive style.

Richard L. Sippel  
Administrative Law Judge

---

<sup>3</sup> Copies of this Order were e-mailed to all counsel on date of issuance.